

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1 and 63	)	IB Docket No. 04-47
of the Commission's Rules	)	

**COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)<sup>1</sup> hereby submits comments in response to the Commission’s March 4, 2004, Notice of Proposed Rulemaking (“Notice”) requesting comment on changes to the Section 214 international authorization process and associated rules governing Commercial Mobile Radio Service (“CMRS”) providers’ provision of outbound and inbound international telecommunications services.<sup>2</sup>

CTIA appreciates the Commission’s efforts to adhere to the requirements of Section 11 of the Telecommunications Act of 1996 and further streamline the regulatory burdens placed upon CMRS providers that seek to provide ancillary outbound international services or U.S.-inbound international “roaming” services. To this end, CTIA urges the Commission to exempt CMRS carriers offering outbound international service or inbound “roaming” international service from Section 214 authorization

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<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> See *Amendment of Parts 1 and 63 of the Commission’s Rules, Notice of Proposed Rulemaking*, IB Docket No. 04-47, FCC 04-40 (rel. March 4, 2004); see also *Amendment of the Commission’s Rules*, 69 Fed. Reg. 13276 (Mar. 22, 2004); *Public Notice, Comment and Reply Comment Dates for Amendment of Parts 1 and 63 Notice of Proposed Rulemaking*, IB Docket No. 04-47, DA 04-763 (rel. Mar. 23, 2004).

requirements and associated Part 63 regulations. At a minimum, and as an interim first step, CTIA supports the Commission's proposal to adopt a post-notification process for CMRS carriers seeking to provide purely resold outbound international service. The Commission should also modify Section 63.21(h) to allow commonly-controlled subsidiaries to use their parent's Section 214 authorizations to provide international services. Finally, the Commission should refrain from taking any action to classify service provided by international roaming agreements under Part 63.

**I. Section 11 Requires the Commission to Exempt CMRS Carriers Offering Resold International Service From the Requirements of Section 214 and Part 63 of the Commission's Rules**

Under the Commission's current rules, CMRS carriers must apply for Section 214 authority to provide international service,<sup>3</sup> even though CMRS carriers are not subject to the provisions of Section 214 for domestic services.<sup>4</sup> Moreover, all CMRS carriers provide international service on a resale basis, and most do so only as an ancillary service

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<sup>3</sup> See 47 U.S.C. § 214; see also *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 16857, 16882 (1998) (hereinafter "PCIA Forbearance Order") (stating that "we find that it is necessary to continue to require that international services be provided only pursuant to an authorization that can be conditioned or revoked").

<sup>4</sup> For domestic wireless service, the Commission long ago concluded that Section 214 was limited to service provided over "lines" and thus did not apply to the radio-based services provided by CMRS carriers. See, e.g., *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, 1480-81 (1994) (hereinafter "CMRS Second Report and Order"). Indeed, since CMRS carriers receive licenses from the Commission as a predicate to providing service, there is no reason to obtain a "certificate" of public convenience and necessity from the Commission.

intended to provide additional options and convenience for wireless consumers.<sup>5</sup> The Commission has twice rejected proposals – in the *1998 PCIA Forbearance Order*<sup>6</sup> and the *1998 International Biennial Review Order*<sup>7</sup> – to either forbear from regulating, or exclude, CMRS carriers from the Section 214 requirements due to: 1) concerns that a foreign affiliate with “market power at the foreign end of a U.S. route”<sup>8</sup> could “leverage that power to discriminate against U.S. competitors on that affiliated route;” or 2) “national security or law enforcement grounds.”<sup>9</sup>

However, in comments provided in conjunction with the *2002 International Biennial Review Public Notice*,<sup>10</sup> Cingular Wireless LLC (“Cingular”) noted that the *2000 International Biennial Review Order* found that CMRS carriers offering resold international service are unlikely to be able to distort traffic.<sup>11</sup> The *2000 International Biennial Review Order* also stated that “no complaints have been filed . . . alleging that CMRS carriers have engaged in traffic distortion schemes” and that “it is not obvious that

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<sup>5</sup> See Cingular Wireless, LLC Comments, IB Docket No. 02-309, at 5 (filed Oct. 18, 2002) (hereinafter “Cingular Comments”).

<sup>6</sup> 13 FCC Rcd at 16881-84.

<sup>7</sup> *1998 Biennial Regulatory Review, Review of International Common Carrier Regulations, Report and Order*, 14 FCC Rcd 4909, 4911 (1999) (hereinafter “1998 International Biennial Review Order”).

<sup>8</sup> Notice at ¶ 16.

<sup>9</sup> *Id.* at ¶ 17.

<sup>10</sup> *Public Notice, International Bureau Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations*, IB Docket No. 02-309, DA 02-2382 (rel. Sept. 25, 2002).

<sup>11</sup> See Cingular Comments at 5-6; see also *2000 Biennial Regulatory Review, Report and Order*, 17 FCC Rcd 11416, 11429 (2002) (hereinafter “2000 International Biennial Review Order”).

these switched resellers of unaffiliated services have the ability or the incentive to engage in such anti-competitive conduct on these routes where they are affiliated with foreign carriers possessing market power.”<sup>12</sup> Furthermore, Cingular noted that the Commission’s various “law enforcement and national security concerns” regarding a CMRS exemption from the Section 214 international authorization requirement makes little sense due to the fact that there is no Section 214 requirement for the resale of domestic services, and that foreign companies “can even provide facilities-based domestic interstate, interexchange service in the United States without obtaining a Section 214 authorization.”<sup>13</sup> Accordingly, Cingular urged the Commission to eliminate the Section 214 international authorization requirement and Part 63 regulation for CMRS carriers offering resold international service.<sup>14</sup>

In recommending rejection of Cingular’s request for relief from the Part 63 requirements, the *2002 International Biennial Review Staff Report* stated that “Cingular has not presented *any arguments or new information* that the Commission did not consider in the PCIA Forbearance Order, and the staff does not recommend that the Commission depart from the rationale set forth by the Commission in that order.”<sup>15</sup> The *Notice* also followed this approach, by proposing a narrow “blanket section 214 resale authorization[] for CMRS carriers with a *de minimis* share of the U.S. International services market” while still subjecting CMRS carriers to “the requirements of Part 63,

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<sup>12</sup> 2000 International Biennial Review Order, 17 FCC Rcd at 11429.

<sup>13</sup> Cingular Comments at 10.

<sup>14</sup> *Id.* at 5-8.

<sup>15</sup> *Federal Communications Commission, International Bureau Biennial Regulatory Review 2002, Staff Report*, 18 FCC Rcd 4196, Appendix VI, ¶ 14 (2002) (hereinafter “2002 International Biennial Review Staff Report”).

including its foreign carrier affiliation notice requirements, competitive safeguards, and reporting requirements.”<sup>16</sup> Such analysis, however, completely ignores the fact that Cingular presented information justifying elimination of both the CMRS Section 214 international authorization requirement and associated Part 63 regulation that *postdated* the release of the *PCIA Forbearance Order* and, therefore, required consideration on its own merits.

Under the framework of Section 11, the Commission is required to undertake a comprehensive review of all rules impacting wireless carriers and must eliminate rules that are not “necessary” or “essential” during the Biennial Review process in order to satisfy the statutory mandate of Section 11.<sup>17</sup> Furthermore, the Commission must conduct this analysis under the strictures of the Administrative Procedure Act (“APA”).<sup>18</sup> Under the APA, any Biennial Review decision must be “based on a solid factual record and a consistent analytical framework”<sup>19</sup> and must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”<sup>20</sup> In this case, there was no examination of the *current* data or rationale provided by Cingular arguing for repeal of the Section 214

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<sup>16</sup> Notice at ¶¶ 18-19.

<sup>17</sup> See 47 U.S.C. § 161(a).

<sup>18</sup> See *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002) (hereinafter “*Fox*”), *reh’g granted*, 293 F.3d 537 (D.C. Cir. 2002) (hereinafter “*Fox II*”) (deleting paragraph interpreting statutory meaning of phrase “necessary”).

<sup>19</sup> 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 17 FCC Rcd 18503, 18505 (2002).

<sup>20</sup> *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1970); see also *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

international authorization and Part 63 requirements. Instead, the Commission ignored Cingular's arguments and relied on analysis in an earlier decision that has been superceded by new facts and the Commission's subsequent determinations. Accordingly, in the absence of any evidence supporting the continued application of any Section 214 authorization requirements or Part 63 regulation to CMRS carriers, CTIA again urges the Commission to exempt CMRS carriers from those requirements.

**II. At the Very Minimum, the Commission Should Adopt the CMRS Section 214 Streamlining Proposals Detailed in the Notice as an Interim Step**

As stated above, CTIA believes that Section 11 requires the Commission to eliminate the Section 214 international authorization requirement and Part 63 regulations for CMRS carriers because those requirements are "no longer necessary in the public interest." As an interim step, however, CTIA supports certain proposals delineated in the Notice that will streamline the Section 214 international authorization process for CMRS carriers.

**A. Post-Notification Process for CMRS Provision of International Service**

In the Notice, the Commission seeks comment on a proposal that would grant CMRS carriers a "narrow exception from the Commission's rules for authorizing the provision of international services."<sup>21</sup> Under this exception, a prior application for Section 214 international authority would not be required for CMRS carriers offering resold international service that are: 1) "unaffiliated with a foreign carrier with market power operating at the foreign end of a route," or 2) "has an affiliation with such a foreign carrier, [and] seeks to provide international service by reselling directly or

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<sup>21</sup> Notice at ¶ 19.

indirectly the international switched services of U.S. carriers with which it is not affiliated.”<sup>22</sup> Instead, a CMRS carrier offering resold international service would only have to “notify the Commission within 30 days of when it begins to provide international service through the resale of an unaffiliated U.S. carrier.”<sup>23</sup>

As stated earlier, CTIA does not believe that Section 214 “approval” for CMRS carriers offering resold international service – either through a prior authorization or a notification process – is justified. However, to the extent that the Commission’s proposal represents an interim step towards streamlining the regulatory treatment of CMRS carriers offering international service, CTIA supports the Commission’s proposal to adopt the post-notification process delineated above.

**B. Use of Section 214 Authorization by Commonly-Owned Subsidiaries**

Under Section 63.21(h) of the Commission’s rules, a wholly-owned subsidiary may provide international service pursuant to its parent company’s Section 214 authorization.<sup>24</sup> Commonly-controlled subsidiaries, on the other hand, are required to obtain their own Section 214 authorizations.<sup>25</sup> In the Notice, the Commission recognized concerns over the disparate treatment of such subsidiaries, and requests comment on “whether to amend section 63.21(h) to allow commonly-controlled subsidiaries to provide international service pursuant to their parent’s international authorization.”<sup>26</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at ¶ 20.

<sup>24</sup> *See* 47 C.F.R. § 63.21(h).

<sup>25</sup> *See id.*; *see also* 2000 International Biennial Review Order, 17 FCC Rcd at 11433-34.

<sup>26</sup> Notice at ¶ 32.

To the extent that the Commission continues to require any Section 214 authorization requirements for CMRS carriers' provision of international services, CTIA supports modifying Section 63.21(h) to allow commonly-controlled CMRS subsidiaries to use a parent's Section 214 authorization. In the *2002 International Biennial Review Staff Report*, much of the rationale for maintaining the separate Section 214 authorization requirement for commonly-controlled subsidiaries appears is based on apparent concern over "additional foreign affiliations or minority ownership or beneficial interest by persons or entities that are barred from holding a Commission authorization that require separate review."<sup>27</sup> Information on foreign affiliations, however, is already available via CMRS carriers' Form 602 filings or a Section 310(b)(4) petition for declaratory ruling when significant new levels of direct or indirect levels of foreign ownership are proposed for a CMRS carrier. Accordingly, there is no reason to duplicate the production of this information by imposing a separate Section 214 authorization requirement on commonly-controlled CMRS affiliates that wish to use their parent's authorization.

At most, CTIA could support the Commission's proposal that a commonly-controlled "subsidiary notify the Commission within 30 days after beginning to provide service under its parent's authorization."<sup>28</sup> Such a notification process would allow interested parties, such as Government agencies, to examine a CMRS carriers' Form 602 or Section 310(b)(4) filings for any additional foreign affiliations, and provide public comment, if necessary, on those affiliations.

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<sup>27</sup> 2002 International Biennial Review Staff Report, 18 FCC Rcd at 4238, Appendix VI, ¶ 15.

<sup>28</sup> Notice at ¶ 32.



### **III. International Roaming Agreements Are Beyond the Purview of Part 63**

In the Notice, the Commission states that Section 63.23 currently “does not specifically address the ability of a carrier with an international resale authorization to resell the service of a foreign carrier for inbound U.S.-international service.”<sup>29</sup> The Commission also notes that this “lack of clarity may cause some confusion as to whether a CMRS carrier can resell U.S. inbound service of a foreign carrier for the U.S.-CMRS carrier’s customers that are roaming in a foreign country.”<sup>30</sup> To “clarify” this issue, the Commission proposes to modify “sections 63.18(e)(2) and 63.23 of the rules to permit explicitly all U.S.-authorized resale carriers to resell U.S.-inbound international services of both U.S. or foreign carriers.”<sup>31</sup>

CTIA submits that no clarification of section 62.23 is required. International roaming does not consist of the “resale of service from foreign carriers.” Rather, international roaming is facilitated through the execution of roaming agreements among facilities-based carriers whereby one carrier agrees to allow another carrier’s customers to utilize its network. Roaming agreements often are characterized as wholesale billing and collection agreements between carriers. “Resale,” on the other hand, involves a reseller purchasing service from a facilities-based carrier that the reseller itself will offer to its customers in the same market area. Accordingly, on this basis alone, there is no reason for the Commission to lump international roaming agreements – which entail inbound service provided wholly by foreign CMRS carriers – within the rubric of Section

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<sup>29</sup> *Id.* at ¶ 25.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at ¶ 26.

63.23, which regulates resellers offering the international services of U.S. facilities-based carriers.

Furthermore, CTIA notes that the Commission lacks jurisdiction over foreign carriers. Under an international roaming agreement – even an agreement that includes U.S.-international calls – service is provided exclusively by a foreign mobile carrier, and does not become a U.S. international service merely because the call is terminated in the United States. Accordingly, CTIA requests that the Commission take no action at this time to amend Sections 63.18(e)(2) or 63.23.

### **CONCLUSION**

For the aforementioned reasons, CTIA urges the Commission to eliminate outdated and unnecessary CMRS international authorization and associated Part 63 regulatory requirements by adopting the recommendations set forth in these comments.

Respectfully submitted,

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